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7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2011-79**

11 **KIMBERLEY HILL NICOLAZZO**
12 **P.O. Box 221836**
13 **Newhall, CA 91322**

ACCUSATION

14 **Registered Nurse License No. RN 468827**
15 **Nurse Anesthetists Certification No. NA 2296**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 31, 1991, the Board of Registered Nursing (Board) issued
23 Registered Nurse License No. 468827 to Kimberley Hill Nicolazzo (Respondent). The
24 Registered Nurse License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on March 31, 2011, unless renewed.

26 3. On or about April 9, 1997, the Board issued Nurse Anesthetists Certification No. NA
27 2296 to Respondent. The Nurse Anesthetists Certification was in full force and effect at all times
28 relevant to the charges brought herein and will expire on March 31, 2011, unless renewed:

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1 “(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary
2 action against a health care professional license or certificate by another state or territory of the
3 United States, by any other government agency, or by another California health care professional
4 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
5 action.

6 “(f) Conviction of a felony or of any offense substantially related to the qualifications,
7 functions, and duties of a registered nurse, in which event the record of the conviction shall be
8 conclusive evidence thereof.”

9 8. Section 2762 states:

10 “In addition to other acts constituting unprofessional conduct within the meaning of this
11 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
12 chapter to do any of the following:

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14 “(b) Use any controlled substance as defined in Division 10 (commencing with Section
15 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
16 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
17 himself or herself, any other person, or the public or to the extent that such use impairs his or her
18 ability to conduct with safety to the public the practice authorized by his or her license.

19 “(c) Be convicted of a criminal offense involving the prescription, consumption, or
20 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
21 or the possession of, or falsification of a record pertaining to, the substances described in
22 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
23 thereof.”

24 9. Section 2764 provides, in pertinent part, that the expiration of a license shall not
25 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
26 to render a decision imposing discipline on the license.

27 10. Code section 2826, subdivision (a) provides in pertinent part, “‘Nurse anesthetist’
28 means a person who is a registered nurse, licensed by the board and who has met standards for

1 certification from the board. In the certification and recertification process the board shall
2 consider the standards of the Council on Certification of Nurse Anesthetists and the Council on
3 Recertification of Nurse Anesthetists and may develop new standards if there is a public safety
4 need for standards more stringent than the councils' standards...."

5 REGULATORY PROVISIONS

6 10. California Code of Regulations, title 16, section 1444, states, in pertinent part:

7 "A conviction or act shall be considered to be substantially related to the qualifications,
8 functions or duties of a registered nurse if to a substantial degree it evidences the present or
9 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
10 safety, or welfare.

11 Such convictions or acts shall include but not be limited to the following:

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13 "(c) Theft, dishonesty, fraud, or deceit."

14 COST RECOVERY

15 11. Section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licensee found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 FIRST CAUSE FOR DISCIPLINE

20 (Conviction of Substantially-Related Crimes)

21 12. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and
22 (f) and section 490, as defined in California Code of Regulations, title 16, section 1444, in that on
23 or about May 12, 2004, after pleading *nolo contendere*, Respondent was convicted of one
24 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the
25 influence of alcohol or drugs] and one misdemeanor count of violating Penal Code section 273,
26 subdivision (b) [receiving payment for uncompleted adoption], in the criminal proceeding entitled
27 *The People of the State of California v. Kimberly Hill Nicolazzo* (Super. Ct. Los Angeles County,
28 2004, No. 4MT03443). Respondent was sentenced to 15 days in Los Angeles County Jail, placed

1 on probation for three years, and fined. The circumstances surrounding the conviction are that on
2 or about March 12, 2004, Respondent operated a vehicle under the influence of alcohol or drugs.

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5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Dangerous Use of Alcohol and/or Drugs)**

7 13. Respondent is subject to disciplinary action under section 2762, subdivisions (b) and
8 (c), in that Respondent used alcoholic beverages and/or drugs to an extent or in a manner
9 dangerous or injurious to herself, and the public. Respondent drove a vehicle, while under the
10 influence of alcohol and/or drugs. Complainant refers to, and by this reference incorporates, the
11 allegations set forth above in paragraph 12, though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Conviction Involving the Consumption of Alcohol and/or Drugs)**

14 14. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and
15 (f), as defined in section 2762, subdivision (c), in that on or about March 12, 2004, Respondent
16 was convicted of a crime involving the consumption of drugs. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraph 12, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Discipline by Out of State Agency)**

20 15. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4), in
21 that on or about December 5, 2007, the National Board of Certification and Recertification of
22 Nurse Anesthetists revoked Respondent's Nurse Anesthetists certificate because Respondent
23 created and used a fraudulent recertification card.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct)**

26 16. Respondent is subject to disciplinary action under section 2761, subdivision (a),
27 in that on or about December 5, 2007, the National Board of Certification and Recertification of
28 Nurse Anesthetists revoked Respondent's Nurse Anesthetists certificate because Respondent

1 created and used a fraudulent recertification card.

2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board issue a decision:


5 1. Revoking or suspending Registered Nurse License No. 468827, issued to Kimberley
6 Hill Nicolazzo;

7 2. Revoking or suspending Anesthetists Certification No. NA 2296, issued to Kimberley
8 Hill Nicolazzo;

9 3. Ordering Kimberley Hill Nicolazzo to pay the Board the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3; and

12 4. Taking such other and further action as deemed necessary and proper.

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14 DATED: 7/29/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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